

**Introduced by Senators Alpert and Morrow  
(Coauthor: Senator Machado)**

February 19, 2004

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An act to add Sections 23605, 23671, 24416.8, and 25128.1 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1572, as introduced, Alpert. Life science companies: credits: NOLs.

(1) The Corporation Tax Law authorizes various credits against the taxes imposed by that law.

This bill would authorize a qualified life science company, as defined, a credit against those taxes for taxable years beginning on or after January 1, 2005, in an amount equal to a specified percentage of the amount of the increase in the total value of the investment, as defined, made by the company during a period of one, or two or three consecutive, taxable years.

This bill would also, for taxable years beginning on and after January 1, 2005, authorize a credit to a qualified life science company, as defined, for qualified wages, as calculated, paid to qualified employees, as defined, by that qualified life science entity.

(2) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross

business receipts from conducting one or more qualified business activities, as defined, including extractive, savings and loan, banking and financial business activities, and business income is apportioned in accordance with a specified 3-factor formula.

This bill would, for taxable years beginning on or after January 1, 2005, not to exceed 3 consecutive taxable years, allow a qualified life science company, as defined, to apportion its business income to this state using modified payroll and property factors, as provided.

(3) The Corporation Law allows a deduction for net operating losses in computing income subject to tax.

This bill would provide that any unused net operating losses, incurred by a life science company, as defined, may be sold to, and used by, any qualified life science company, as defined.

(4) This bill would also provide that the aggregate amount of all tax credits, exemptions, and benefits claimed by a qualified life science company pursuant to this act may not exceed an amount equal to a specified percentage of that company's increase in the total investment in this state, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) California is the birthplace and home to more life science  
4 companies than any other state. Currently, the state has more than  
5 2,500 life science companies that employ more than 225,000  
6 people.

7 (b) The rapidly growing life science industry is a critical factor  
8 in the state's economic recovery and growth, and, therefore,  
9 California should provide the life science industry with a stable  
10 economic environment and those incentives that will allow the  
11 industry to expand and prosper.

12 (c) Creation of a prosperous environment for life science  
13 companies requires California, among other things, to maintain a  
14 high caliber work force. High value and high quality jobs are  
15 necessary components of both the state's growing economy and  
16 the companies' continued success. These jobs will provide



1 employment opportunities for individuals with various levels of  
2 higher education, with an emphasis on bachelor of science and  
3 associate in science degrees.

4 (d) The life science industry is at a turning point today, as many  
5 companies are completing clinical trials required by the Food and  
6 Drug Administration (FDA), and are making a transition from  
7 research and development to manufacturing. Current life science  
8 manufacturing capacity worldwide is inadequate to produce  
9 products that will be approved by the FDA and are needed by  
10 patients. Consequently, companies will need to build new  
11 manufacturing facilities.

12 (e) With many states and foreign countries offering every  
13 incentive within their power to entice life science companies to  
14 expand and relocate there, California is not well positioned to  
15 capture economic benefits from the potentially explosive growth  
16 in life science manufacturing.

17 (f) Recognizing that the life science industry is a necessary and  
18 vital element of the state's economic recovery and growth, the  
19 Legislature finds that various performance-based economic  
20 rewards would provide an incentive for life science companies to  
21 build their manufacturing facilities in this state, and would allow  
22 this state, without decreasing its revenues, to capture the economic  
23 benefits resulting from the growth in life science manufacturing.

24 SEC. 2. Section 23605 is added to the Revenue and Taxation  
25 Code, to read:

26 23605. (a) For taxable years beginning on or after January 1,  
27 2005, there shall be allowed a credit against the amount of "tax,"  
28 as defined in Section 23036, to a qualified life science company  
29 in an amount equal to the amount calculated pursuant to  
30 subdivision (b).

31 (b) (1) The amount of credit that may be claimed pursuant to  
32 this section equals the applicable of the following:

33 (A) Fifty percent of the increase in the total value of the  
34 investment made by a qualified life science company in real and  
35 tangible personal property located in this state, if both of the  
36 following are met:

37 (i) The overall increase in the total value of the investment  
38 made by a qualified life science company during a period of one  
39 to three consecutive taxable years beginning on or after January 1,



1 2005, is equal to or greater than fifty million dollars  
2 (\$50,000,000).

3 (ii) The qualified life science company has created at least 50  
4 new jobs in this state during the one to three consecutive taxable  
5 years beginning with the first taxable year of the period in which  
6 the qualified life science company has increased its total  
7 investment in California pursuant to clause (i), provided that the  
8 new jobs are directly related to the life science company's  
9 investment in this state.

10 (B) Seventy-five percent of the increase in the total value of the  
11 investment made by a qualified life science company in real and  
12 tangible personal property located in this state, if both of the  
13 following are met:

14 (i) The overall increase in the total value of the investment  
15 made by a qualified life science company during a period of one  
16 to three consecutive taxable years is equal to or greater than  
17 seventy-five million dollars (\$75,000,000).

18 (ii) The qualified life science company has created at least 75  
19 new jobs in this state during the one to three consecutive taxable  
20 years beginning with the first taxable year of the period in which  
21 the qualified life science company has increased its total  
22 investment in California pursuant to clause (i), provided that the  
23 new jobs are directly related to the life science company's  
24 investment in this state.

25 (C) Ninety-five percent of the increase in the total value of the  
26 investment made by a qualified life science company in real and  
27 tangible personal property located in this state, if both of the  
28 following are met:

29 (i) The overall increase in the total value of the investment  
30 made by a qualified life science company during a period of one  
31 to three consecutive taxable years is equal to or greater than one  
32 hundred million dollars (\$100,000,000).

33 (ii) The qualified life science company has created at least 100  
34 new jobs in this state during the one to three consecutive taxable  
35 years beginning with the first taxable year of the period in which  
36 the qualified life science company has increased its total  
37 investment in California pursuant to clause (i), provided that the  
38 new jobs are directly related to the life science company's  
39 investment in this state.



(2) For purposes of this subdivision, “total value of the investment” means the amount of money invested by a qualified life science company in real and tangible personal property that is included in the property factor, as defined in paragraph (4), in taxable years beginning before January 1, 2005.

(3) The increase in the total value of the investment made by a qualified life science company shall be determined at the end of a taxable year beginning on or after January 1, 2005.

(4) “Property factor” means a fraction, the numerator of which is the average value of the qualified life science company’s real and tangible personal property owned, leased, or rented and used in this state during the taxable year, and the denominator of which is the average value of all the qualified life science company’s real and tangible personal property owned or rented and used in this state during the taxable year.

(c) For purposes of this section:

(1) “Qualified life science company” means a life science company that satisfies all of the following:

(A) Is engaged in those lines of business described in Codes 325411, 325412, 325413, 325414, 339112, 339113, 541380, 541710, 541720, and 541910 of the North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget, 2002 edition, including manufacturing and process development of medicinal chemicals and products, biopharmaceuticals and medical devices, pharmaceutical preparations, in vitro and in vivo diagnostic substances, biological products, and associated equipment and vessel cleaning and maintenance.

(B) During a period of one to three consecutive taxable years beginning on or after January 1, 2005, it increases its total investment in California as provided in subdivision (b).

(C) It creates new jobs in this state, as provided in subdivision (b).

(2) “New jobs” means expanded full-time employment at the living wage in California in those industries that are described in Codes 325411, 325412, 325413, 325414, 339112, 339113, 541380, 541710, 541720, and 541910 of the NAICS Manual published by the United States Office of Management and Budget, 2002 edition.

(3) “Living wage” means a level of income sufficient to support a family and subsist comfortably, as defined in \_\_\_\_\_, and includes benefits, as defined in \_\_\_\_\_.

(d) In the case where the credit otherwise allowed under this section exceeds the “tax” for the taxable year, that portion of the credit which exceeds the “tax” may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted.

(e) (1) Notwithstanding subdivision (a), the aggregate amount of exemptions, credits, or tax benefits claimed by a qualified life science company under this section, Section 23671, 24416.8, or 25128.1 may not exceed the applicable of the following:

(A) In the case of a qualified life science company that meets the requirements of subparagraph (A) of paragraph (1) of subdivision (b), 50 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(B) In the case of a qualified life science company that meets the requirements of subparagraph (B) of paragraph (1) of subdivision (b), 75 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(C) In the case of a qualified life science company that meets the requirements of subparagraph (C) of paragraph (1) of subdivision (b), 95 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(2) The Franchise Tax Board shall prescribe rules and regulations to implement this section.

SEC. 3. Section 23671 is added to the Revenue and Taxation Code, to read:

23671. (a) For each taxable year beginning on or after January 1, 2005, a qualified life science company is allowed a credit against the “tax,” as defined in Section 23036, in an amount equal to the amount calculated pursuant to subdivision (b).

(b) The credit authorized by this section is equal to that amount calculated by multiplying the number of new jobs created at a qualified facility of a qualified life science company by an amount of the qualified wages paid or incurred during the taxable year by the qualified life science company.

(c) For purposes of this section:

(1) “Qualified life science company” means a qualified life science company, as defined in Section 23605.

(2) “Qualified wages” means those wages paid or incurred by the qualified life science company during the taxable year to a qualified employee.

(3) “Qualified employee” means an employee hired by a qualified life science company for employment at a qualified facility.

(4) “Qualified facility” means a facility that begins business operations in this state on or after January 1, 2005, and is owned and operated by a qualified life science company.

(5) “New jobs” means new jobs, as defined in Section 23605, that are directly related to the operation of a qualified facility.

(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit is exhausted.

(e) (1) Notwithstanding subdivision (a), the aggregate amount of exemptions, credits, and tax benefits claimed by a qualified life science company under this section, Section 23605, 24416.8, or 25128.1 may not exceed the applicable of the following:

(A) In the case of a qualified life science company that meets the requirements of subparagraph (A) of paragraph (1) of subdivision (b) of Section 23605, 50 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(B) In the case of a qualified life science company that meets the requirements of subparagraph (B) of paragraph (1) of subdivision (b) of Section 23605, 75 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(C) In the case of a qualified life science company that meets the requirements of subparagraph (C) of paragraph (1) of subdivision (b) of Section 23605, 95 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(2) The Franchise Tax Board shall prescribe rules and regulations to implement this section.



SEC. 4. Section 24416.8 is added to the Revenue and Taxation Code, to read:

24416.8. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.3, 24416.4, 24416.5, 24416.6, and 24416.7, and any other provision of this part to the contrary, any unused net operating losses incurred by a life science company may be sold to, and used by, a qualified life science company.

(b) For purposes of this section, “life science company” means a company that is subject to Part 11 (commencing with Section 23001) of Division 2 and is engaged in those lines of business described in Codes 325411, 325412, 325413, 325414, 339112, 339113, 541380, 541710, 541720, and 541910 of the North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget, 2002 edition, including manufacturing and process development of medicinal chemicals and products, biopharmaceuticals and medical devices, pharmaceutical preparations, in vitro and in vivo diagnostic substances, biological products, and associated equipment and vessel cleaning and maintenance.

(c) For purposes of this section, “qualified life science company” means a life science company as defined in Section 23605.

(d) Notwithstanding subdivision (a), in the case of a qualified life science company, as defined in Section 23605, the aggregate amount of exemptions, credits, and tax benefits claimed by that company under this section, Section 23605, 23671, or 25128.1 may not exceed the applicable of the following:

(1) In the case of a qualified life science company that meets the requirements of subparagraph (A) of paragraph (1) of subdivision (b) of Section 23605, 50 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(2) In the case of a qualified life science company that meets the requirements of subparagraph (B) of paragraph (1) of subdivision (b) of Section 23605, 75 percent of the amount of the increase in the total value of the investment, as defined in this section, made by the qualified life science company.

(3) In the case of a qualified life science company that meets the requirements of subparagraph (C) of paragraph (1) of subdivision (b) of Section 23605, 95 percent of the amount of the increase in



1 the total value of the investment, as defined in this section, made  
2 by the qualified life science company.

3 SEC. 5. Section 25128.1 is added to the Revenue and Taxation  
4 Code, to read:

5 25128.1. (a) Notwithstanding any other provision of law, for  
6 purposes of Section 25128, for taxable years beginning on or after  
7 January 1, 2005, and for a period of not more than three  
8 consecutive taxable years, all business income of a qualified life  
9 science company may be apportioned to this state by multiplying  
10 the business income by a fraction, the numerator of which is the  
11 property factor, as provided in subdivision (b), plus the payroll  
12 factor, as provided in subdivision (c), plus twice the sales factor,  
13 as defined in Section 25134, and the denominator of which is four.

14 (b) For purposes of this section, Section 25129 relating to the  
15 definition of a property factor is modified to provide that the  
16 numerator of the property factor utilized in apportioning the  
17 business income of a qualified life science company does not  
18 include any real or tangible personal property acquired by the  
19 qualified life science company in taxable years on or after January  
20 1, 2005.

21 (c) For purposes of this section, Section 25132 relating to the  
22 definition of a payroll factor is modified to provide that the  
23 numerator of the payroll factor utilized in apportioning the  
24 business income of a qualified life science company does not  
25 include the amount of qualified wages, as defined in Section  
26 23671, paid in this state by the qualified life science company  
27 during taxable years on or after January 1, 2005.

28 (d) “Qualified life science company” means a life science  
29 company as defined in Section 23605.

30 SEC. 6. This act provides for a tax levy within the meaning of  
31 Article IV of the Constitution and shall go into immediate effect.

